Valley Ag Water Coalition

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October 6, 2011

Fethi Benjemaa
Department of Water Resources
901 P Street, Suite 313A
Sacramento, CA 95814

Re: SBX7-7—Agricultural water measurement regulations

Dear Mr. Benjemaa:

I am writing on behalf of the Valley Ag Water Coalition (VAWC) to comment on the permanent agricultural water measurement regulation drafted by the Department of Water Resources for consideration of adoption by the California Water Commission.

The mission of the Valley Ag Water Coalition is to represent the collective interests of its San Joaquin Valley member agricultural water companies and agencies in California legislative and regulatory matters by providing leadership and advocacy on issues relating to the development and delivery of a reliable farm water supply.

The emergency regulation approved by the Office of Administrative Law in July was developed over the course of more than a year with input from a diverse group of stakeholders including agricultural, environmental and academic representatives. This proposed permanent regulation differs in key aspects.

The language in SBx7-7 requires water suppliers serving 25,000 irrigated acres or more to measure the volume of water delivered to customers. California's agricultural water measurement statute (Chapter 675, Statutes of 2007) is based on recommendations that were developed by an independent panel that issued a report in September 2003 entitled "Independent Panel on Appropriate Measurement of Agricultural Water Use." The independent panel emphasized that implementation of new measurement methods must be adaptive, account for changes in technology and economics, and allow for local flexibility. Implementation approaches were directed to be regionally sensitive, incentive driven, and cost effective. Subdivision (b) of Section 531.10 of the Water Code

provides that nothing in the statute shall be construed to require the implementation of water measurement programs or practices that are not locally cost effective.

The Department contends that "unlike other efficient water management practices that are required only when locally cost effective under section 10608.48(c), SB X7-7 does not provide any exemptions from the water measurement requirement of 10608.48(b)(1). That section provides (in part):

> *10608.48. (a) On or before July 31, 2012, an agricultural water supplier shall implement efficient water management practices pursuant to subdivisions (b) and (c).*
> *(b) Agricultural water suppliers shall implement all of the following critical efficient management practices:*
> *(1) Measure the volume of water delivered to customers with sufficient accuracy to comply with subdivision (a) of Section 531.10 and to implement paragraph (2).*
> *(2) Adopt a pricing structure for water customers based at least in part on quantity delivered.*

VAWC has always maintained that the Department is incorrect in its assertion that the locally cost effective standard does not apply to agricultural water measurement requirements as codified by SB X7-7. While measurement must occur under the mandate of SB X7-7, it must be held to a locally cost effective standard. The Department errs in reading the provisions of Section 10608.48(b)(1) to the exclusion of the locally cost effective standard set forth in subdivision (b) of Section 531.10. Reference only to subdivision (a) of Section 531.10 is merely appropriate statutory reference to the measurement requirement. The provisions of subdivision (b) of that section cannot be ignored or else a plain reading of the statute—and the clear intent of the Legislature—is turned on its head. The Department must balance achievement of the measurement mandate ("sufficient accuracy") with the cost impact of the proposed permanent regulation and seek the most reasonable, appropriate and economic means of achieving the mandate.

<u>United States Bureau of Reclamation (USBR) Water Conservation Plan Applicability</u>

USBR currently requires Central Valley Project (CVP) water contractors that meet the 25,000-acre threshold to measure water deliveries and utilize a pricing structure that is at least in part based on the volume delivered. The proposed permanent regulation, by eliminating an exemption for federal contractors that was included in the emergency regulation, will force federal contractors to comply with two likely inconsistent sets of regulations: USBR Water Conservation Plan criteria and the SBx7-7 measurement regulation.

The proposed permanent regulation relies on the "Cost Analysis for Proposed Agricultural Water Measurement Regulation in Support of Economic and Fiscal Impact Statement," dated April 22, 2011. Yet, for purposes of that economic and fiscal impact analysis, suppliers subject to CVP Water Management Plans were excluded. Therefore, the estimated statewide costs to comply with the proposed agricultural water measurement regulation are not accurate within a reasonable range of direct costs. The Department, for example, estimated that nearly 21,000 current measurement sites statewide would require modification, repair or a new device and that the mid-range estimates of total present value of costs would be $333 million over 20 years, and $420 million over 40 years. These estimates are no longer valid with the elimination of the exemption for federal water contractors.

VAWC asserts that the record of the regulatory proceeding includes sufficient expert opinion to establish that it is neither necessary nor cost effective to require federal contractors to comply with a new state-imposed regulation that essentially duplicates federal requirements. VAWC does not believe it is in the public interest to create a duplicative requirement regarding agricultural measurement for federal water contractors.

Certification Relating to Legal Access

Al significant change in the proposed permanent measurement regulation now requires an agricultural water supplier's legal counsel to certify to the Department that the supplier does not have legal access to measure water at a customer's delivery point. This change requires legal certification where the previous version required a supplier to "self certify." The addition of a legal certification requirement will necessarily impose significant legal expenses that VAWC does not believe were subjected to cost impact analysis. Self-certification by the governing body of a water supplier should be sufficient to address the matter of access to private property. Requiring the services of legal counsel will create an unnecessarily time consuming and very expensive mandate that will not likely result in better information.

VAWC asserts that the record of the regulatory proceeding includes sufficient expert opinion to establish that it is neither necessary nor cost effective to require a legal certification regarding access to private property.

Implementation Schedule

The proposed permanent regulation would require that all measurement devices be brought into compliance within three years of December 2012 instead of within three years of determining that they are out of compliance. This creates a conflict for devices that are found to be out of compliance after the December 2012 deadline. The previous three-year compliance schedule for devices found

to be out of compliance provides a logical and cost-effective method for dealing with devices that are found to be out of compliance after 2012.

VAWC is unaware of any information in the record of the regulatory proceeding that addresses the cost impact of such a change. VAWC believes such a change is unnecessary, burdensome and not locally cost-effective.

In closing, VAWC recommends that the Department and Commission make permanent the emergency regulation that was adopted in June and approved by the Office of Administrative Law in July.

Sincerely,

Robert J. Reeb
Executive Director

RJR: